

September 9, 1999

MAINE PUBLIC UTILITIES COMMISSION
Standard Offer Bidding Procedure

ADVISORY RULING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

SUMMARY

In this Advisory Ruling, we interpret the opt-out charge provision of Chapter 301, section 2 (C) (2) to apply to competitive electricity providers that systematically act to cause groups of customers with collective demands greater than 50 kW to transfer into and out of the standard offer.

DISCUSSION

The Commission has been charged with conducting a bid process to select providers of standard offer service for those electricity customers that do not choose a competitive provider. 35-A M.R.S.A. § 3212. As part of that bid process, on August 26, 1999, the Commission conducted a bidders' conference to allow potential bidders to ask questions regarding the selection process and the requirements of standard offer service. During the conference, a participant asked if the opt-out charge provision of Chapter 301 applies to activity by "competitive electricity providers," as well as to "aggregators."

Chapter 301's opt-out charge provision refers to individual customers or aggregated groups of customers with collective demands of greater than 50 kW that have returned to the standard offer after having entered the competitive market. If such individual customers or aggregated groups of customers then terminate standard offer service and take service from a competitive electricity provider within 12 months of returning to the standard offer, an opt-out charge equal to an average monthly bill will be assessed to the individual customer or to the aggregator of the aggregated group. Ch. 301, § 2(C)(2). In our order provisionally adopting Chapter 301, we explained that the purpose of the opt-out charge provision is to deter the strategic entry and exit, or gaming, of the standard offer service. *Order Provisionally Adopting Rule and Statement of Policy Basis*, Docket No. 97-739 at 8-13 (Feb. 11, 1998). This gaming could occur as a result of the requirement that standard offer prices be fixed for a year. Because the underlying cost of providing electricity varies substantially by season, gaming could occur by moving onto the standard offer during the high cost seasons and then leaving standard offer for the competitive market when the cost of electricity is low. The prospect of this type of activity would have the effect of increasing prices for all standard offer customers, because bidders might seek to "cover" their risk of this kind of behavior and bid higher than they would otherwise.

The issue presented at the bidders' conference results from the terms "aggregated groups" and "aggregator" contained in the opt-out provision of Chapter 301. The use of these terms raises the question of whether the provision applies to a competitive electricity provider that systematically moves its own customers into and out of the standard offer to game the fixed-price standard offer. Chapter 110, Part 6 of the our rules allows the Commission to make an advisory ruling as to the applicability of its rules to specified acts or events. Upon consideration of the language and intent of Chapter 301, we conclude that the opt-out charge provision applies to competitive electricity providers that act to move customers with a combined demand of 50 kW onto and off of the standard offer.

The intent of the opt-out charge provision, as discussed in our order provisionally adopting Chapter 301, is clear: to deter the gaming of the fixed-price standard offer. There is no reason to distinguish between an aggregator and a competitive electricity provider in this regard. A competitive provider that moves its own customers onto and off of the standard offer would cause just as much damage as an aggregator that systematically moves another entity's customers in the same fashion.

The language in the rule is also consistent with this interpretation. An aggregator is essentially an entity that gathers individual customers together for the purpose of purchasing electricity from a third party supplier. When a competitive provider acts to cause its customers to move to the standard offer, it is acting as an aggregator for the purchase of standard offer service. In this context, we conclude that the same entity can be both a competitive provider and an aggregator if its actions satisfy both definitions.

For the reasons discussed above, we conclude that the opt-out charge provision of Chapter 301 applies to competitive electricity providers acting as we have described here.

Dated at Augusta, Maine, this 9th day of September, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond